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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,285	10/16/2003	Jeffrey Donald Manuell	ROC920030361US1	7541

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EXAMINER

CAO, CHUN

ART UNIT	PAPER NUMBER
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2115

DATE MAILED: 09/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/687,285

Applicant(s)

MANUELL ET AL.

Examiner

Chun Cao

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 July 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-9 and 11-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-9 and 11-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

FINAL REJECTION

1. Claims 1, 3-9, 11-29 are presented for examination.
2. The text of those applicable section of Title 35, U.S. Code not included in this action can be found in the prior Office Action.
3. The rejections are respectfully maintained that is applicable and reproduced infra for applicant's convenience.

Claim Rejections - 35 USC § 101

4. Claim 9 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 9 is not limited to tangible embodiments. In view of Applicant's disclosure, specification page 12, paragraph 0031, the medium is not limited to tangible embodiments, instead being defined as including both tangible embodiments and intangible embodiments such as signals, waveforms, transmissions and communication link which are non-statutory subject matter. As such, the claim is not limited to statutory subject matter and is therefore non-statutory. Specifically, the claims recite computer program in a computer readable media. The computer readable media as described in the specification includes communication links and computer program on communication links is not a proper manufacture under 35 U.S.C. 101. For purposes of examination it will be interpreted that the media is statutory subject.
5. Claims 1, 5, 7, 9, 13, 15 and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by Nakagawa, U.S. patent no. 6,990,593 (hereinafter "Nakagawa").

As per claim 1, Nakagawa teaches a method for managing an operation of a computing complex having one or more computer servers during a utility outage [figures 2, 3], the method comprising the steps of:

monitoring one or more operating environment parameters within the computing complex [fig. 3; col. 3, lines 9-16]; and

selectively powering down one or more of the computer servers based on a current state of the operating environment parameters [activities] and a criticality value [priority level] assigned to each of the one or more computer servers [fig. 3, col. 3, lines 6-40].

As per claim 5, Nakagawa teaches the computing complex is powered by at least one battery driven uninterruptible power supply during the utility outage [figures 2, 4; col. 3, lines 45-50; col. 4, lines 27-32].

As per claim 7, Nakagawa teaches the utility outage is a power failure [col. 3, lines 19-20].

Regarding to claims 9, 13 and 15, Nakagawa teaches the claimed method of steps as set forth hereinabove. Therefore, Nakagawa also teaches the computer program stored in a computer-readable medium to carry out the method of steps.

As per claim 29 is contained the same limitations as claim 1. Therefore, same rejection is applied.

6. Claims 3, 4, 8, 11, 12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa, U.S. patent no. 6,990,593 in view of Bodas (Bodas), US publication no. 2004/0163001.

As to claims 3 and 11, Nakagawa does not explicitly teach that one or more operating environment parameters include one or more ambient temperature readings within the computing complex. In other word, Nakagawa does not teach a thermal manager for reading temperature in the system.

Bodas teaches that a thermal manager for reading temperature in the computer network system [fig. 3; paragraphs 0032, 0035, 0053].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Nakagawa and Bodas because they both teach a method of controlling UPS, the specify teachings of Bodas stated above would improve the performance and reliability of Nakagawa system by considering the temperature of the system as a parameter to better control the UPS.

As to claims 4 and 12, Bodas inherently teaches one or more operating environment parameters include a current time of day [paragraph 0059].

As to claims 8 and 16, Bodas inherently teaches of the utility failure is a cooling failure within the computer complex [paragraphs 0032 0035, 0053].

7. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakagawa, U.S. patent no. 6,990,593 in view of Hammond et al. (Hammond), US patent no. 6,865,685.

As to claims 6 and 14, Nakagawa does not explicitly teach of sending pager text messages to a predetermined set of support personnel based on the current state of the operating environment parameters.

Hammond teaches of sending pager text messages to a predetermined set of support personnel based on the current state of the operating environment parameters [col. 3, lines 11-14].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Nakagawa and Hammond because the specify teachings of Hammond stated above would improve the reliability of Nakagawa system.

8. Claims 17, 18 and 20-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodas (Bodas), US publication no. 2004/0163001 in view of Nakagawa, U.S. patent no. 6,990,593.

As per claim 17, Bodas discloses an apparatus for managing an operation of a computing complex comprising one or more computer servers during a utility outage [FIG. 2], the apparatus comprising:

a set of environment equipment for maintaining an operating environment of the computing complex [fig. 3];

an environment monitor server [280, fig. 3; paragraph 0037] coupled to the set of environment equipment for monitoring the current state of one or more operating environment parameters within the computing complex [paragraphs 0029, 0032];

a set of control files for determining a current load shed category for the computing complex [paragraph 0035, 0059];

a centralized load shedding manager coupled to the environment monitor server and the set of control files, a centralized load shedding manager adjusting power for one or more of the computer servers based on a current state of the one or more

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environment parameters, the current load shed category for the computing complex and a criticality value assigned to each of the one or more computer servers [paragraphs 0050, 0051, 0076].

Bodas does not explicitly teach of managing the selective powering down of one or more of the computer servers based on the current state of the one or more environment parameters.

Nakagawa teaches of managing the selective powering down of one or more of the computer servers based on the current state of the one or more environment parameters [fig. 3, col. 3, lines 26-40].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Nakagawa and Bodas because they both teach a method of controlling UPS, the specify teachings of Nakagawa stated above would improve the performance of Nakagawa system by further reducing the power consumption of Bodas system by powering off one or more servers.

As per claim 18, Bodas discloses the set of environment equipment includes at least one member chosen from the group consisting of: an uninterruptible power supply (UPS), a power distribution unit (PDU), a static transfer switch (STS), an air handling unit (AHU), and a temperature probe [paragraphs 0032, 0039].

As per claim 20, Bodas discloses that one or more operating environment parameters include one more ambient temperature reading provided by the temperature probe [fig. 3; paragraphs 0032, 0035, 0053].

As per claim 21, Bodas inherently teaches one or more operating environment parameters include a current time of day [paragraph 0059].

As per claim 22, Nakagawa teaches the computing environment is powered by the uninterruptible power supply during the utility outage [figures 2, 4; col. 3, lines 45-50; col. 4, lines 27-32].

As per claim 23, Nakagawa teaches the utility outage is a power failure [col. 3, lines 19-20].

As per claim 24, Bodas inherently teaches of the utility failure is a cooling failure within the computer complex [paragraphs 0032 0035, 0053].

As per claim 25, Bodas inherently discloses that the set of control files includes a load shedding master table [paragraphs 0050, 0051, 0076].

9. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodas (Bodas), US publication no. 2004/0163001 in view of Nakagawa, U.S. patent no. 6,990,593 and Langer et al. (Langer), US patent no. 5,381,554.

As to claim 19, Bodas and Nakagawa do not explicitly teach that one or more operating environment parameters include remaining battery operating time of at least one uninterruptible power supply powering the computing complex.

Langer teaches that one or more operating environment parameters include remaining battery operating time of at least one uninterruptible power supply powering the computing complex [fig. 2; col. 5, lines 29-45].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Bodas and Nakagawa and Langer because they teach a

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method of controlling UPS, the specify teachings of Langer stated above would improve the performance and reliability of Bodas-Nakagawa system by considering battery running time as a parameter to better control the UPS.

10. Claims 26 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bodas (Bodas), US publication no. 2004/0163001 in view of Nakagawa, U.S. patent no. 6,990,593 and Hammond et al. (Hammond), US patent no. 6,865,685.

As to claims 26 and 27, Bodas and Nakagawa do not explicitly discloses a load shedding pager table. In other word, Bodas and Nakagawa does not explicitly teach of sending pager text messages to a predetermined set of support personnel according to the load shedding pager table.

Hammond inherently discloses that a load shedding pager table for sending pager text messages to a predetermined set of support personnel [col. 3, lines 11-14].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Bodas and Nakagawa and Hammond because the specify teachings of Hammond stated above would improve the reliability of Bodas-Nakagawa system.

11. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bodas (Bodas), US publication no. 2004/0163001 in view of Nakagawa, U.S. patent no. 6,990,593 and Ewing et al. (Ewing), US patent no. 5,949,974.

As per claim 14, Bodas and Nakagawa do not explicitly disclose one or more simple network management protocol (SNMP) traps.

Official Notice is taken that the simple network management protocol (SNMP) trap is very well known in the computer art. Such as, Ewing discloses simple network management protocol (SNMP) traps [fig. 1, col. 5, lines 26-36].

It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Bodas and Nakagawa and Ewing, the specify teachings of Ewing stated above would improve the performance by implementing SNMP protocol in Bodas-Nakagawa system.

Response to Arguments

12. Applicant's arguments filed on 7/10/06, which have been fully considered but they are not persuasive.

13. In the remarks, Applicant argued that 1) Nagakawa does not teach that a current state of the operating environment parameters and a criticality value assigned to each of the one or more computer servers; 2) There is no suggestion to combine the Bodas and Nakagawa references.

14. The examiner respectfully traverses the argument for the following reasons:

As to 1) Nagakawa teaches that a current state of the operating environment parameters [activities] and a criticality value [priority level] assigned to each of the one or more computer servers [fig. 3, col. 3, lines 6-40].

As to 2) In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so

found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Nakagawa does not explicitly teach that one or more operating environment parameters include one or more ambient temperature readings within the computing complex. In other word, Nakagawa does not teach a thermal manager for reading temperature in the system. However, Bodas teaches that a thermal manager for reading temperature in the computer network system [fig. 3; paragraphs 0032, 0035, 0053]; and control power consumption by powering off one or more computer system in accordance to the temperature reading. It would have been obvious to one of ordinary skill in the art at time the invention to combine the teachings of Nakagawa and Bodas because they both teach a method of controlling UPS, the specify teachings of Bodas stated above would improve the performance and reliability of Nakagawa system by considering the temperature of the system as a parameter to better control the UPS.

Also see detailed rejection indicated above.

15. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chun Cao whose telephone number is 571-272-3664. The examiner can normally be reached on Monday-Friday from 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas C. Lee can be reached on 571-272-3667. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is 571-272-2100.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Sep. 6, 2006



**CHUN CAO
PRIMARY EXAMINER**